IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

Crl.L.P..No. 84 of 2007()
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CC.104/2003 of J.M.F.C.-II, CHERTHALA
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PETITIONER/COMPLAINANT :
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K.AMBUJAKSHAN, S/O.SREEDHARAN PILLAI
MALIEL, ERAMALLOOR, NOW RESIDING AT
C/O.GOPALAKRISHNAN NAIR, AMULYA,
ERAMALLOOR.

BY ADV. SRI.A.X.VARGHESE
SRI.A.V.JOJO

RESPONDENTS: ACCUSED.
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1. STATE OF KERALA, REPRSENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. GANGADHARA KURUP, AGED 71 YEARS,
S/O.SREEDHARAN PILLAI, MALIEL HOUSE,
ERAMALLOOR.

3. RAJESH, AGED 46 YEARS,
S/O.SREEDHARAN PILLAI, MALIEL HOUSE,
ERAMALLOOR.

4. K.G.MURALIKRISHNAN, AGED 43 YEARS,
LAKSHMI NIVAS, VALAMANGALAM NORTH,
THURAVOOR.

R1-BY P.P.SRI.P.RAVEENDRA BABU
R2 TO R4-BY ADV. SRI.C.K.SAJEEV

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 19/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**K. THANKAPPAN, J.**

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**Crl.L.P.No.84 OF 2007**

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**Dated this the 19th day of February, 2007.**

**O R D E R**

This is a petition for special leave to appeal against the order passed in C.C.No.104/2003 on the file of the Judicial Magistrate of First Class-II, Cherthala. In the complaint, the appellant/complainant had stated that as per the will alleged to have been executed by his parents, an extent of 10 cents of property comprised in Survey No.231/I of Eramallur village is in possession and enjoyment of the complainant. That property has been already mortgaged to the Eramallur Service Co-operative Bank and the Bank was allowed to take usufructs from that property. In the meanwhile, the 1st accused along with the other accused trespassed into the property and they plucked coconuts from the property and thereby committed the offences punishable under Sections 379,468 and 473 read with Section 34 of the I.P.C. After a full fledged trial, the trial court found that the petitioner/appellant had not proved the property in question which is exclusively owned by him except his claim

over the property is depending on a will alleged to have been executed by his parents. The 1st respondent is the brother of the appellant, who also claims the right over the property and he had already filed a civil suit against the appellant claiming the right over the property. The trial court further found that the petitioner is not in a position to prove that the respondents have committed the offences as alleged. That apart, in the complaint itself it was stated by the appellant that the property was pledged with the Service Co-operative Bank, Eramallur and the Bank was taking usufructs from the property. The Bank was not a party to the proceedings also. Hence, after considering the entire evidence, the trial court acquitted the respondents.

2. This Court heard the learned counsel appearing for the appellant and perused the judgment of the trial court.

After having considered the entire evidence, this Court is of the view that the judgment of the trial court does

not require any interference. Hence the leave to appeal stands dismissed.

**K. THANKAPPAN, JUDGE.**

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